

1. 5059 GREYSON CREEK DRIVE, LLC V. PERSEVERE LENDING INC. ET AL. 22CV1328

Plaintiff moves for a preliminary injunction restraining Defendants Persevere Lending, Inc. (“Persevere”), Pacific Premier Trust Custodian fbo Kenneth B. Berry IRA, Pacific Premier Trust Custodian fbo Burton Leitzell IRA, Dan Larkin and Mundi Larkin (collectively, “The Beneficiaries”), WFG National Title Insurance Company (“WFG”), The Foreclosure Company, Inc. (“TFC”), and all other persons or entities with interest in the real property at issue in the present matter (collectively “Defendants”) from engaging in the following acts: (1) completing the foreclosure sale of the real property located at 5059 Greyson Creek Drive, El Dorado Hills, CA 94526 while the present action is pending; and (2) issuing or recording any new or amended Notice of Trustee’s Sale in connection with the foreclosure of the real property located at 5059 Greyson Creek Dr., El Dorado Hills, CA 94526. Plaintiff’s Motion, Memorandum of Points and Authorities, Declaration of Alejandro Martinez, Declaration of Brian Morrow, Request for Judicial Notice and Proposed Order were all filed and served on January 24, 2023.

The Beneficiaries filed and served their opposition papers on February 9th and 10th. Defendants’ Opposition to Plaintiff’s Motion for Preliminary Injunction is supported by a Declaration of Hillary A. Lehmann and a Declaration of Damon Bowers. Defendants also filed evidentiary objections to the declaration of Alejandro Martinez and to the declaration of Brian Morrow. The remaining defendants, WFT and TFC have not opposed the preliminary injunction. Plaintiff filed its Reply to Opposition, Evidentiary Objections to Declaration of Daman Bowers, and a Declaration of Alejandro Martinez on February 16, 2023; however, due to court error these documents were not received and reviewed by the court prior to the initial hearing date on this matter. The court issued its tentative ruling which became the order of the court on February 24, 2023. Thereafter, the reply documents were brought to the attention of the court. The court vacated its February 24th ruling and re-set the matter for the present hearing date. Request for Judicial Notice

In support of its motion for a preliminary injunction, Plaintiff has requested the court take judicial notice of the following: (1) Notice of Default and Election to Sell Under Deed of Trust, recorded in the El Dorado County Recorder’s Office on June 9, 2022, Document Number 2022-0025085; and (2) The Complaint filed in the present action. Plaintiff has attached copies of each of the subject documents as exhibits to its request. Defendants have not objected to the request.

Judicial notice is a mechanism which allows the court to take into consideration matters which are presumed to be indisputably true. California Evidence Code Sections 451, 452, and 453 govern the circumstances in which judicial notice of a matter may be taken. While Section 451 provides a comprehensive list of matters that *must* be judicially noticed, Section 452 sets forth matters which *may* be judicially noticed, including “[r]ecords of (1) any court of this state or (2) any court of record of the United States or of any state of the United States” and “[f]acts

and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” Cal. Ev. Code § 452 (d) & (h).

Section 452 provides that the court “may” take judicial notice of the matters listed therein, while Section 453 provides a caveat that the court “shall” take judicial notice of any matter “specified in Section 452 if a party requests it and: (a) Gives each adverse party sufficient notice of the request...to enable such adverse party to prepare to meet the request; and (b) Furnishes the court with sufficient information to enable it to take judicial notice of the matter.” Cal. Evid. Code § 453.

The documents which are the subject of this request fall well within the confines of Section 452. Plaintiff complied with the requirements of Section 453, giving each party enough notice of the requests and giving the court sufficient information, including copies of the documents, to enable the court to take judicial notice thereof. Accordingly, Plaintiff’s request for judicial notice is granted.

Evidentiary Objections

Both parties submitted evidentiary objections to declarations submitted on either side. See attached rulings on evidentiary objections.

Preliminary Injunction

According to Plaintiff, Persevere, and The Beneficiaries loaned Plaintiff \$1,200,000 for the construction of a custom home on the property located at 5059 Greyson Creek Drive, El Dorado Hills, CA 94526. A Construction Deed of Trust and Assignment of Rents was filed to secure the loan on April 30, 2021 (the “Deed of Trust”). The Deed of Trust identified Defendant WFG as trustee. On or about December 19, 2021, Plaintiff submitted a draw request in the amount of \$290,000 which was estimated to cover the costs of labor and materials to complete the project such that a certificate of occupancy could be obtained. Persevere sent a general contractor, Mr. Silvani, to inspect the project prior to the approval of the draw request. Plaintiff maintains that Mr. Silvani missed his appointment to inspect the project and likely never inspected it at all. After the dispute over the alleged inspection by Mr. Silvani, Persevere agreed to wire an initial payment on the draw request in the amount of \$100,000. However, the \$100,000 was wired to the wrong account and was never received by Plaintiff. Plaintiff continued to send follow up communications requesting the \$100,000, though, according to Plaintiff, the only response received was a notice of default.

On June 9, 2022 a Notice of Default and Election to Sell Under Deed of Trust was filed by TFC on behalf WFG (“Notice of Default”). The Notice of Default cites Plaintiff’s alleged failure to make payments as the reason for the default. However, according to Plaintiff, this is in contrast to a notice of default letter (the “Default Letter”) delivered to Plaintiff which cites numerous

other grounds for the default. The inconsistencies between the two, Plaintiff argues, causes the Notice of Default filed with the county to be fraudulent and defective and therefore, the property cannot be foreclosed upon. Additionally, Plaintiff denies each of the purported breaches as stated in the Default Letter. Even if Plaintiff had breached, Plaintiff argues the breach would have been excused due to the prior breach of Defendants.

Plaintiff argues further that it should not be required to tender the amount owing under the note in order to obtain the requested relief because a sale has not yet occurred, and the circumstances of the matter would make it unjust to require Plaintiff to pay a debt which includes \$100,000 that Plaintiff never received in the first place. Finally, Plaintiff points to the fact that the harm suffered by Defendants in the face of an injunction is nominal as they will continue to maintain the deed of trust until a final determination on the merits is made. In contrast, Plaintiff argues it will suffer irreparable harm if the property is sold since Plaintiff would have no right to set aside such a sale to a bona fide third-party purchaser even if Plaintiff wins in the merits of the case.

The Beneficiaries maintain that Plaintiff defaulted on the loan over a year ago and the reason stated in the Notice of Default is correct. Simply because Persevere sent a letter identifying other defaults committed by Plaintiff, that does not render the filed Notice of Default unenforceable. The Beneficiaries argue that Plaintiff is unlikely to prevail on the merits of the case because it has been in default since March of 2022 and there is no legal basis to excuse the default. The Beneficiaries state that on March 15th a payoff demand letter was sent to Plaintiffs which stated a payoff amount of \$938,483.99. This amount did not include the \$100,000 that Plaintiff claims it did not receive, and still Plaintiff has not offered to reinstate the loan. The Beneficiaries state that there was no breach on their behalf which would excuse Plaintiff's default. According to The Beneficiaries, they had wide latitude to withhold payments after a breach and that is what they did.

Further, The Beneficiaries assert that Plaintiff has failed to establish that it would be irreparably harmed if the preliminary injunction was to be denied; whereas The Beneficiaries would suffer harm by the imposition of the injunction. According to The Beneficiaries, given the current status of the incomplete project on the property, the foreclosure and the present litigation, the Beneficiaries have been unable to obtain insurance for the property which leaves the value of their collateral at a substantial risk until the foreclosure can be completed. Notwithstanding the foregoing, if the court is inclined to grant the injunction, The Beneficiaries request the court require Plaintiff to post a bond in the amount of \$1,157,635.98 to protect The Beneficiaries from losing their security on the property in the event it is damaged before a determination on the merits of the claim is made.

Plaintiff's reply documents essentially reiterate its position that it is likely to prevail on the merits, especially in light of the fact that the opposition has revealed the imposition of

\$5,011.90 per day in arguably unenforceable penalties. Plaintiff further notes the inconsistencies in the amount owed pursuant to the declaration of Mr. Bowers and that stated in the Notice of Sale. Plaintiff argues that it only stopped payments on the loan after the Beneficiaries had materially breached their obligations under the loan and therefore Plaintiff's performance under the contract was excused. Finally, Plaintiff notes that it contracted with a third-party purchaser ("Purchaser") to build the custom home and thereafter sale the property to the Purchaser. Plaintiff reveals that it is being sued for specific performance under its contract with Purchaser in a separate action in this county (Case No. 22CV0690)(the "Brost Action").

"An injunction may be granted in the following cases: ¶ (1) When it appears by the complaint that the plaintiff is entitled to the relief demanded, and the relief, or any part thereof, consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually. ¶ (2) When it appears by the complaint or affidavits that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury, to a party to the action. ¶ (3) When it appears, during the litigation, that a party to the action is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the rights of another party to the action respecting the subject of the action, and tending to render the judgment ineffectual. ¶ (4) When pecuniary compensation would not afford adequate relief. ¶ (5) Where it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief. ¶ (6) Where the restraint is necessary to prevent a multiplicity of judicial proceedings. ¶ (7) Where the obligation arises from a trust." Cal. Civ. Pro. § 526(a). The general purpose of such an injunction is to preserve the status quo until there is a final determination of the matter on the merits. The term "status quo" has been defined to include the last actual peaceable, uncontested status which preceded the pending controversy. Voorhies v. Greene, 139 Cal.App.3d 989, 995 (1983).

As a threshold issue, the moving party must establish that it will suffer irreparable harm in the absence of an injunction. See Cal. Civ. Pro. § 526(2) & (4); *See also Butt v. State of Cal.*, 4 Cal. 4th 668, 677-678 (1992). Once the threshold issue has been satisfied, the court is to consider two separate but interrelated factors: (1) The likelihood the moving party will prevail on the merits; and (2) the balancing of the harm suffered by the moving party if the injunction were to be denied as opposed to the harm suffered by the opposing party if the injunction were to be granted. Smith v. Adventist Health System/West, 182 Cal. App. 4th 729, 749 (2010). The moving party bears the burden of establishing a prima facie showing of entitlement to injunctive relief. O'Connell v. Sup. Ct., 141 Cal. App. 4th 1452, 1481 (2006). Such a burden is not to be taken lightly as "[i]t is said: 'To issue an injunction is the exercise of a delicate power,

requiring great caution and sound discretion, and rarely, if ever, should [it] be exercised in a doubtful case...' [Citations]." Ancora-Citronelle Corp. v. Green, 41 Cal. App. 3d 146, 148 (1974).

Irreparable Harm

“'[T]he extraordinary remedy of injunction cannot be invoked without showing the likelihood of irreparable harm.' [Citations]. 'Irreparable harm' does not mean 'injury beyond the possibility of repair or beyond possible compensation in damages.'" Donahue Schriber Realty Group, Inc. v. Nu Creation Outreach, 232 Cal. App. 4th 1171, 1184 (2014). An irreparable injury is established where the evidence submitted shows actual or threatened injury to property or personal rights which cannot be compensated by an ordinary damage award. See Brownfield v. Daniel Freeman Marina Hospital, 208 Cal. App. 3d 405, 410 (1989). In instances involving the conveyance of real property, the property is generally considered unique and therefore monetary damages are insufficient compensation. See Civ. Code § 3387; See also Stockton v. Newman, 148 Cal. App. 2d 558, 564 (1957). However, where the property holds only a marketing interest and Plaintiff intends to sell it, money damages are compensable and therefore no irreparable harm occurs as the result of a forfeiture sale. See Jessen v. Keystone Sav. & Loan Ass'n, 142 Cal. App. 3d 454, 458 (1983).

The threatened harm at hand is the selling of the property through a foreclosure auction. Plaintiff argues that real property is considered unique and therefore money damages are insufficient to compensate for its loss of the property. The court previously denied the injunction on the basis that Plaintiff essentially concedes that to Plaintiff, the value of the property rests in Plaintiff's ability to sell it for financial gain and payoff the note. See Memo. of Points and Auth., Jan. 24, 2023, pg. 10:22-24 ("Payment of the final draw under the Note is material to the entire Loan Agreement because without it, Plaintiff cannot complete the Project, *sell the Property and re-pay the Loan per the terms of the Note.*") (Emphasis added). It was unclear to the court at that time that Plaintiff is in fact being sued in a separate lawsuit (Case No. 22CV0690) wherein the intended purchasers of the home are suing for specific performance under their contract with Plaintiff. This outstanding suit could potentially subject Plaintiff to a judgment for specific performance to build a custom home on the specific property located at 5059 Greyson Creek Drive, El Dorado Hills, CA 94526. Given that property in California is generally considered unique to the purchaser, such a judgment could not be satisfied if the property were sold off at auction. As such, Plaintiff has established the potential for irreparable injury and the court now turns to balancing the likelihood of prevailing on the merits against the harm suffered by each of the parties in the face of granting or denying the injunction.

Balancing – Potential Harm

With the potential for harm to Plaintiff having been established, the court must weigh that harm against the harm that may befall Defendants in the event the injunction is granted. Similar to the court's analysis in determining the existence, or lack thereof, of a potential for irreparable harm, in balancing the potential harm to each of the respective parties, the court is to consider "...such things as the inadequacy of other remedies, the degree of irreparable harm, and the necessity of preserving the status quo." [Citations]." *Donahue, supra* at 1177.

In the event the injunction is granted, the harm averred by Defendants is twofold. First, The Defendants will not be able to sell the property immediately and they would incur the cost and expense of beginning the foreclosure process again should a determination on the merits be in their favor. In other words, issuance of an injunction would impose a delay in Defendants' ability to exercise their rights, not a divestment of those rights entirely. While the court is sympathetic to Defendants' position, in light of the potential harm to Plaintiff, the delay to Defendants is rather insignificant.

The Defendants also indicate that that they have been unable to obtain insurance on the property thus leaving the property vulnerable to devaluation. Again, this argument is unconvincing. Courts have found that the mere possibility of a potential harm is not sufficient to warrant issuing an injunction. It stands to reason, that where Plaintiff has shown the potential for irreparable injury, the fact that Defendants surmise a mere possibility of harm is not sufficient to overcome Plaintiff's need for an injunction. See *Hahn v. Curtis*, 73 Cal. App. 2d 382 (1946) (stating the mere possibility of potential injury is not sufficient to warrant an injunction). That said, even if an injunction is issued and some damage to the property occurs while litigation is ongoing, the decreased value to the property is easily compensable by money damages.

Where, as here, Plaintiff's potential harm is irreparable by money damages alone and Defendants' is more tenuous and easily remedied by money damages, the facts weigh in favor of granting the requested injunction.

Balancing - Prevailing on the Merits

The second prong to be considered is whether Plaintiff has established either a "reasonable probability" or "some possibility" that it can prevail on the merits of its claim. *Robbins v. Sup. Ct.*, 38 Cal. 3d 199 (1985); see also *Jamison v. Dept. of Transp.*, Cal. App. 5th 356, 362 (2016). Where irreparable harm has been established by Plaintiff but there has been no showing that it will succeed on the merits, the injunction is to be denied. See *14859 Moorpark Homeowners Ass'n*, 63 Cal. App. 4th 1396 (1998). The reason being, there is no justification in delaying the harm which, although irreparable, is likely unavoidable. See *Id.* Of course, "[t]he granting or denial of a preliminary injunction does not amount to an adjudication of the

ultimate rights in controversy. It merely determines that the court, balancing the respective equities of the parties, concludes that, pending a trial on the merits, the defendant should or that he should not be restrained from exercising the right claimed by him. [Citations.] The general purpose of such an injunction is the preservation of the status quo until a final determination of the merits of the action. [Citations.]” Voorhies v. Greene, 139 Cal. App. 3d 989, 995 (1983).

The complaint in this matter asserts claims for breach of contract, negligence, intentional interference with contract, intentional interference with prospective economic relations, negligent interference with prospective economic relations, injunctive relief, accounting, declaratory relief and violations of Business and Professions Code § 17200 et. seq. There has quite clearly been a breakdown of the contractual relations between the parties. And while Defendants maintain that the issue is clear, Plaintiff stopped payment on its loan, therefore Defendant was no longer required to issue disbursements and it has the right to foreclose on the property. In actuality, it appears to be much more complicated than that. Plaintiff argues that Defendant failed to perform under the contract prior to Plaintiff discontinuing payments. Therefore, according to Plaintiff, its performance was excused, and payments were not required to be made. There does appear to be sufficient factual basis that a trial on the merits may result in a judgment in favor of Plaintiff.

Even if a trial on the merits does not result entirely in favor of Plaintiff, the dispute regarding how much is owed on the loan and exorbitant amount of interest accruing on the loan may result in a judgment where Plaintiff is ordered to pay significantly less than the amount sought by Defendant. This is especially in light of the legal maximum allowable interest and the moratorium on penalties in a contract both of which require a factual determination that will need to be made by the jury as to whether the per diem amount of \$5,011.90 constitutes valid legal interest, or improper damages.

Given the myriad of factual disputes between the parties, Plaintiff has established a reasonable chance of its prevailing on the merits of the case, whether it be in its entirety or at least with regard to the amount owed. That said, the court is of the opinion that it is proper to maintain the status quo until these disputes can be resolved on the merits. The preliminary injunction is granted. Defendants Persevere Lending, Inc., Pacific Premier Trust Custodian fbo Kenneth B. Berry IRA, Pacific Premier Trust Custodian fbo Burton Leitzell IRA, Dan Larkin and Mundi Larkin, WFG National Title Insurance Company, The Foreclosure Company, Inc., and all other persons or entities with interest in the real property at issue in the present matter are restrained from engaging in the following acts until a determination on the merits of the case has been reached: (1) completing the foreclosure sale of the real property located at 5059 Greyson Creek Drive, El Dorado Hills, CA 94526 while the present action is pending; and (2)

issuing or recording any new or amended Notice of Trustee's Sale in connection with the foreclosure of the real property located at 5059 Greyson Creek Dr., El Dorado Hills, CA 94526.

Bond

On granting an injunction, the court must require a bond, or allow a deposit in lieu thereof, in an amount sufficient to account for the damages the restrained party "...may sustain by reason of the injunction, if the court finally decides that the applicant was not entitled to the injunction." Cal. Civ. Pro. § 529; Cal. Civ. Pro. § 995.710. "The trial court's function is to estimate the harmful effect which the injunction is likely to have on the restrained party, and to set the undertaking at that sum. [Citations]...In reviewing the trial court's estimation, the first step is to identify the types of damages which the law allows a restrained party to recover in the event that the issuance of the injunction is determined to have been unjustified. The sole limit imposed by the statute is that the harm must have been proximately caused by the wrongfully issued injunction. [Citations]" Abba Rubber Co. v. Seaquist, 235 Cal. App. 3d 1, 14 (1991). "The amount of damage on account of a decline in the adequacy of the security is the difference between the amount for which the security would have sold at the enjoined foreclosure sale and the amount for which it would have sold at a foreclosure sale immediately following the injunction period, not to exceed the difference between the amount of the obligation secured and the amount which would have been received from the later foreclosure sale..." Surety Sav. & Loan Assn. v. Nat'l Automobile & Cas. Ins. Co., 8 Cal. App. 3d 752 757 (1970) *citing* Yellen v. Fidelity & Cas. Co. of New York, 1115 Cal. App. 434 (1931). Amounts such as attorneys' fees proximately resulting from the injunction, as well as any fees and costs Defendant may incur for security services in protecting the property may also be recoverable and are to be considered in determining the bond amount. *See generally* Surety Sav. & Loan Assn., *supra*.

Defendants request a bond in the amount of \$1,157,635 which is the amount due under the loan. They argue that a bond in this amount is the only way to ensure the Beneficiaries do not lose security on the loan in the event the property is damaged prior to the conclusion of the pending litigation. The court finds this to be too speculative. There is no pending danger that the property will be damaged or destroyed to the extent that it renders the property completely without value to securing the loan. Moreover, it would be inequitable to require Plaintiff to post the amount due under the loan when that amount is one of the factual disputes to be resolved at trial. Further, the court is concerned with the legal validity of the per diem interest on the loan and as such, it would be inequitable to require that amount be paid at bond as well.

Instead, the court recognizes the expense that Defendants may incur in seeking to dissolve the injunction as well as the potential for volatility in the value of real property which may affect its resale value at a later date. That said, the court finds that the amount of damages

Defendant may reasonably foreseeably incur as a proximate result of the injunction is unlikely to exceed \$100,000.

Plaintiff is ordered to post a bond or submit a deposit in accordance with Civil Procedure Section 995.710, in the amount of \$100,000 no later than April 17, 2023.

TENTATIVE RULING #1: PLAINTIFF'S REQUEST FOR JUDICIAL NOTICE IS GRANTED. PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION IS GRANTED. PLAINTIFF IS ORDERED TO POST A BOND OR SUBMIT A DEPOSIT IN ACCORDANCE WITH CIVIL PROCEDURE SECTION 995.710, IN THE AMOUNT OF \$100,000 NO LATER THAN APRIL 17, 2023. DEFENDANTS PERSEVERE LENDING, INC., PACIFIC PREMIER TRUST CUSTODIAN FBO KENNETH B. BERRY IRA, PACIFIC PREMIER TRUST CUSTODIAN FBO BURTON LEITZELL IRA, DAN LARKIN AND MUNDI LARKIN, WFG NATIONAL TITLE INSURANCE COMPANY, THE FORECLOSURE COMPANY, INC., AND ALL OTHER PERSONS OR ENTITIES WITH INTEREST IN THE REAL PROPERTY AT ISSUE IN THE PRESENT MATTER ARE RESTRAINED FROM ENGAGING IN THE FOLLOWING ACTS UNTIL A DETERMINATION ON THE MERITS OF THE CASE HAS BEEN REACHED: (1) COMPLETING THE FORECLOSURE SALE OF THE REAL PROPERTY LOCATED AT 5059 GREYSON CREEK DRIVE, EL DORADO HILLS, CA 94526 WHILE THE PRESENT ACTION IS PENDING; AND (2) ISSUING OR RECORDING ANY NEW OR AMENDED NOTICE OF TRUSTEE'S SALE IN CONNECTION WITH THE FORECLOSURE OF THE REAL PROPERTY LOCATED AT 5059 GREYSON CREEK DR., EL DORADO HILLS, CA 94526.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; El Dorado County Local Rule 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

2. HELYNNE NICHOLSON v. KRISTEN KEYSER 22CV1317

Plaintiff filed this action against defendant Kristen Keyser, who is employed by Jordan Management to manage Sunrise Garden Apartments. The two causes of action listed in the complaint are 1) general negligence, and 2) intentional tort. The sole factual allegation of plaintiff's complaint is that in February, 2022, the named defendant "had me removed from my home and then forbade me from coming on the property therefore causing me to lose my job." The alleged damages are, according to proof, 1) wage loss/loss of employment, 2) general damages and 3) loss of earning capacity.

Request for Judicial Notice

Defendant has requested the court to take judicial notice of the complaint filed on September 13, 2022 and provided notice of that request to the opposing party. Evid. Code §452(d) does allow the court to take judicial notice of the records of a California court and, accordingly, the court grants this request.

Demurrer

Defendant has filed a demurrer to all causes of action listed in the complaint. Code Civ. Pro. § 430.10(e) provides that a party may file a demurrer to a pleading where "[t]he pleading does not state facts sufficient to constitute a cause of action."

Cause of Action for Negligence

Actionable negligence is traditionally regarded as involving the following: (1) a legal duty to use due care; (2) a breach of that duty; and (3) the breach as the proximate or legal cause of the resulting injury.

6 Witkin, Summary 11th Torts § 961 (2022) (citations omitted).

Cause of Action for "Intentional Tort"

Similarly, an allegation of an intentional tort requires specification of a violation of a legal duty "imposed by statute, contract, or otherwise, owed by the defendant to the person injured." *Id.* at § 6 (citations omitted).

Additionally, an allegation of intentionally tortious conduct must include "a *factual* chain of causation" to the plaintiff's damages. *Id.* at § 22 (citations omitted).

The complaint does not specify any duty of care owed by the defendant to the plaintiff, nor does it specify how any action by the defendant in violation of any duty owed to the plaintiff proximately caused or was in any way factually related to the plaintiff's alleged harm.

Accordingly, defendant's demurrer is sustained as to both causes of action with leave to amend within 10 days.

TENTATIVE RULING #2: DEFENDANT'S REQUEST FOR JUDICIAL NOTICE IS GRANTED. DEFENDANT'S DEMURRER IS SUSTAINED WITH LEAVE TO AMEND THE COMPLAINT NO LATER THAN APRIL 24, 2023.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; El Dorado County Local Rule 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

3. NAME CHANGE OF NANTHA BALAN SANKAR VALLIAMMAL 22CV1330

This petition for a name change was filed on August 22, 2022. Proof of publication was filed on November 4, 2022. Upon review of the file, the court has yet to receive the background check for petitioner, which is required under the law. Code Civ. Pro. §1279.5(f).

TENTATIVE RULING #3: THIS MATTER IS CONTINUED TO MAY 26, 2023, TO ALLOW TIME FOR A COMPLETED BACKGROUND TO BE RECEIVED BY THE COURT.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; El Dorado County Local Rule 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

4. PEOPLE OF THE STATE OF CALIFORNIA V. DAVID BETAMEN 21CV0088

On October 28, 2021, claimant Betamen filed a claim opposing forfeiture of \$13,400 in currency in response to a Notice of Administrative Proceedings. On February 3, 2022, the People filed a Petition for Forfeiture of Currency that was seized by the El Dorado County Sheriff's Department as a thing of value that was furnished, or intended to be furnished, in exchange for a controlled substance. The People pray for judgment declaring the money forfeited to the State of California.

The following are subject to forfeiture:

All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, or securities used...if the exchange, violation, or other conduct which is the basis for the forfeiture occurred within five years of the seizure of the property, or the filing of a petition under this chapter, or the issuance of an order of forfeiture of the property, whichever comes first.

Health and Safety Code, § 11470(f).

Any person claiming an interest in the property seized pursuant to Section 11488 may... within 30 days after receipt of actual notice, file with the superior court of the county in which the defendant has been charged with the underlying or related criminal offense or in which the property was seized ... a claim, verified in accordance with Section 446 of the Code of Civil Procedure, stating his or her interest in the property.

Health and Safety Code, § 11488.5(a)(1).

The Health and Safety Code requires a forfeiture proceeding to be set for hearing on a day not less than 30 days from the date of the filing of a verified claim; however, "[t]he forfeiture hearing shall be continued upon motion of the prosecution or the defendant until after a verdict of guilty on any criminal charges specified in this chapter and pending against the defendant have been decided." Health and Safety Code §§11488.5(c), 11488.5(e).

The People and counsel for the claimant appeared at a February 4, 2022, hearing. The People stated that the criminal case was still pending and requested a continuance, whereupon the hearing was continued to May 13, 2022. On May 13, 2022, The People appeared and again indicated that the criminal matter was set for a pre-trial conference, requesting a further continuance to August 26, 2022. On August 26, 2022, the court on its own motion stayed the case pending the outcome of the criminal case and continued the hearing date to October 14, 2022. The trial of the criminal matter was ongoing on the October 14, 2022, hearing date, and so the matter was further continued to January 6, 2023. At the January 6 hearing The People and claimant's counsel stipulated to a March 3, 2023, hearing date. On March 3, 2023, the hearing date of April 14, 2023, was set, with counsel for the People to give notice to claimant of the new hearing date.

No proof of service has been filed establishing notice to claimant of the April 14, 2023, hearing date.

TENTATIVE RULING #4: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, APRIL 14, 2023, IN DEPARTMENT NINE.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; El Dorado County Local Rule 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

5. NAME CHANGE OF SHANNA HELTON 23CV0281

This petition for a name change was filed on February 22, 2023. Proof of publication was filed on April 3, 2023. Upon review of the file, the court has yet to receive the background check for petitioner, which is required under the law. Code Civ. Pro. §1279.5(f).

TENTATIVE RULING #5: THIS MATTER IS CONTINUED TO MAY 26, 2023, TO ALLOW TIME FOR A COMPLETED BACKGROUND TO BE RECEIVED BY THE COURT.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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